IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

WRIT PETITION (L) NO. 2603 OF 2004

Air India Limited)
A Government Body incorporated)
under the Indian Companies)
Act, 1956, having its Office at)
Air India Building, Backbay)
Reclamation, Nariman Point,)
Mumbai 400 021.)... Petitioners

vs.

1. Indian Pilots Guild)
Air India Complex, Old Airport)
Santacruz (E), Mumbai 400029)

2. A. K. Agarwal,)
Asst. Labour Commissioner)
(Central), having his office)
at Mumbai Shramraksha)
Bhavan, Shivsrushti Road,)
Eastern Express Highway, Sion)
Mumbai 400 022.)... Respondents

Mr. S. Naphade with
Mr. S. K. Talsania with Mr. J. S.Saluja
i/b. M/s. M. V. Kini & Co., for petitioners
Mr. J. P. Cama Sr. Counsel with
Mr. K. P. Anil Kumar and Mr. Mohan Bir Singh
for respondent no.1

CORAM: **F. I. REBELLO J.**

Date: October 28, 2004

ORAL JUDGMENT:

1. The employer – Air India is aggrieved by the order of the Assistant Labour Commissioner (Central), 2nd respondent herein, dated 13th September 2004. By the said order the Assistant Labour Commissioner (Central) disposed of the application made by the respondent Union for recognition of its office bearers , as 'protected workmen' under Section 33 of the Industrial Disputes Act 1947. By the impugned order the Assistant Labour Commissioner (Central) was pleased to allow the application moved by the petitioners.

2. Two office bearers of the respondent no.1 were granted status of protected workmen for the year 2003 – 2004. Respondent no.1 by letter dated 19th January 2004, forwarded the names of Capt. Vikrant Sansare, General Secretary of the Union at serial no.1 and Capt. V. Kooner, Vice President of the Union, at serial no.2, as the workmen to

be accorded the status of 'Protected Workmen' for the period 2004 to 2005, under Section 33(4) of the Industrial Disputes Act, 1947 read with Rule 61 of the Industrial Disputes (C) Rules , 1957. The respondents also requested that in conformity with the provisions of the Industrial Disputes Act, to confer the status of 'Protected Workmen' to the two workmen within 15 days of the receipt of the intimation. As respondent no.1 did not receive any reply a reminder was addressed on 8.3.2004 . There were no reply to the same. From the record it transpires that on June 16, 2003 the President of another association known as the Air-India Pilots Association had addressed a letter to the petitioner stating that Management should deal with the Air India Line Pilots' Association as the majority of the Line Pilots had lost confidence in the de-recognized Indian Pilots Guild and that they represented the majority of the line pilots and their union was registered on 2nd June 2003. As per the averments in the petition out of 270 line pilots the strength of members of respondent no.1 had been reduced to less than 107. It may be mentioned that this union, from the

pleadings, had not applied for status of protected workmen for any of its members or office bearers. As the status of protected workmen was not agreed to by the petitioner, respondent no.1 by letter dated 17th May 2004 called upon respondent no.2 as competent authority, under Rule 61 (4) to decide the dispute between an employer and a registered trade union in the matter of recognition of 'protected workmen' under the rule. It was further set out that as the respondent no.1 had complied with the requirements of Rule 61 (1), and the provisions of section 33 they were entitled to have atleast two of their office bearers recognized as 'protected workmen' . The 2nd respondent by notice dated 12th July 2004 called on the petitioner and respondent no.1 to remain present before him in the matter of the application filed by respondent no.1 under Rule 61 of the Industrial Disputes Act (Central) Rules, 1957.

3. In reply to the notice issued by respondent no.2 the petitioners by their communication of July 26/ 29, 2004 gave their comments. Firstly they contended that the respondent

Indian Pilots' Guild had been de-recognized by the Management of Air India with effect from 29th April 2003. It was then contended that some pilots of the petitioner had formed a new Trade Union by name Air India Line Pilots' Association and informed the Management vide its letter dated 16th June 2003 that they were representing the majority of the line pilots and that the line pilots numbering about 160 were their members. It was then contended that there were claims from both Indian Pilots' Guild as well as Air India Line Pilots' Association. Lastly it was contended that as per practice, the Management of Air India is not according the status of protected workmen to the office bearers of an unrecognized Union in Air India and that respondent no.1 is a de-recognized Union and as such the status of protected workmen has not been accorded by the Management.

4. Matter was taken up for hearing on various dates. The roznama entry of 30th July 2004 shows that the matter was fixed for evidence of the applicant on 6.8.2004 at 1715 hours. The roznama further shows that the matter was fixed

for evidence of the applicants. On behalf of respondent no.1 affidavit of evidence, came to be filed on 6th August 2004, before the 2nd respondent. The evidence of respondent no.1 was closed as per roznama entry of 6.8.04. Respondent no.1 informed respondent no.2 that they do not desire to lead any oral evidence in the matter. The matter was adjourned for affidavit of evidence of the petitioners to 16.8.04 at 17.15 hours. A notice was also addressed to both the petitioners and respondent nos. 1 and 2 vide notice dated 9th August 2004. The copy of the affidavit of evidence filed by respondent no.1 was also forwarded to the petitioners herein. On 16.8.04 the petitioners raised objections to the taking of affidavit of evidence as the services of the affiant were already terminated by order dated 9th August 2004. That objection was overruled. The petitioners were called upon to furnish documentary evidence. The petitioners sought adjournment which was strongly opposed by respondent no.1. The matter was however, adjourned to Monday, 23rd August 2004 at 1600 hours for final hearing. As the matter could not be taken up on 23.8.04 on account of respondent

no.2 being busy in other urgent matters the parties were informed that the matter is being adjourned to 10.9.2004 at 1100 hours. On that day when the matter was called out , as the petitioners were not present, respondent no.2 decided to proceed ex parte and closed the matter and posted it for orders.

5. On 10th September 2004 the petitioners moved an application that the ex parte order be set aside and the petitioners / company be permitted to participate in the proceedings and contest the application, as otherwise grave prejudice and irreparable hardship be caused to the company, if the orders are not set aside. It was set out that the company has a good case on merits. The cause shown for non-appearance was on account of severe traffic jam , as a result of which the representatives of the petitioners could reach only at 11.30 hours ,when they found that the proceedings had been closed ex parte . In the roznama of 10th September 2004 it is noted that respondent no.1 was present and none appeared for the petitioners, that the matter was fixed for cross

examination of the deponent of the affidavit by the employer and evidence from the employer's side, and that there was no request or intimation for adjournment till the time the roznama order was written. The matter was heard ex parte and order reserved.

6. An order came to be passed on 13th September 2004, when the various events that had taken place were narrated. The reply of 26/29th July 2004 was treated as written statement on behalf of the petitioners. The contentions of respondent no.1 along with the affidavits were then considered as also the provisions of the rules and the Act. Examining the matter on merits the 2nd respondent held that the relevant date is 19th January 2004 when an application was moved under Section 33(4) of the Industrial Disputes Act, 1947 read with Rule 61 of the Industrial Disputes (C) Rules , 1957 forwarding the names of Capt. Vikrant Sansare, General Secretary of the Union and Capt. V. Kooner, Vice President of the Union, as the workmen to be accorded the status of ' Protected Workmen' for the period upto 31.01.2005. The order notes

that the said two office- bearers of the union Capt. Vikrant Sansare, General Secretary of the Union and Capt. V. Kooner, Vice President of the Union were recognized as 'protected workmen' for the year 2003-2004 which was valid upto 31st January 2004 by the employer vide letter dated 9th / 10th January 2003. The 2nd respondent then noted that the objection by the petitioner was that respondent no.1 had been de-recognized with effect from 29.4.2003, but the act and the rules only refers to registered union and not a recognized union. The objections raised by the petitioners on that count was rejected. The 2nd respondent observed that an employer by mere failure to reply or to carry out mandatory obligation of Rule 61(2), cannot escape the statutory obligation and the recognition in such a case has to be necessarily presumed and therefore the application of the Union was allowed.

7. Respondent no.2 while summarily rejecting the application on behalf of the employer for setting aside the ex parte order dated 10.9.2004 noted four reasons as to why the

application should not be considered, as under:

a) The employer is in habit of not attending the hearing / proceedings under law on the scheduled time by down grading the status of law.

b) The employer has already submitted the written comments / statement on merits in this matter.

c) The employer is unnecessarily taking all procedural and other objections, which are totally irrelevant, unconnected and vague in nature, consequently making the things and procedures more complicated and complex with a view to delay the matter and defeat the very purpose of emergent provisions of law contained in Rule 61.

d) The present dispute pertains to the compliance of law contained in Rule 61 by the employer and there are no questions of facts which require adjudication on evidence.

8. It is this order which is subject matter of the present petition. At the hearing of this petition on behalf of the petitioners, their learned counsel submitted as under:

i) That the respondent ought to have considered that for non

appearance of petitioners for the hearing on 10.9.2004 sufficient cause was disclosed and considering that the order ought to have been set aside. It is further submitted that the findings recorded in para 8 under heads (a) and (c) was contrary to the records, as the petitioners had hardly applied for any adjournment. It is submitted that by failing to give an opportunity to the petitioners they have been deprived of leading evidence and consequently the order is liable to be set aside on that count.

ii) It is then submitted that the order of 2nd respondent clearly discloses an error of law apparent on the face of the record. The finding that there was a mandatory obligation under Rule 61(2) to respond within fifteen days and on failure to do so after that period it will be deemed that the workmen named in the application began to enjoy a protected status is contrary to law. In support of the first proposition learned counsel relied on the judgment in **Grindlays Bank Ltd. Vs. The Central Government Industrial Tribunal and ors.,** (AIR 1981 SC 606 as also the judgment of the Apex Court in **Satnam Verma vs. Union of India** (AIR 1985 SC 294). In

support of the second contention that there could not be deemed recognition after the expiry of the period, reliance has been placed on the judgment in the case of **Union of India vs. Rajasthan Anushakti Karmachari Union, Rawatbhata and anr.** [1977 LAB. I. C. 155], wherein what was in issue was making the application for recognition beyond the time set out therein. The learned Judge of the Rajasthan High Court held that the rule was not mandatory but directory as it was merely a procedural requirement. Reliance was then placed in the case between **Canara Workshops and Presiding Officer** 1986 1 LLJ 181. A learned Judge of the Karnataka High Court has taken a view that on failure by the Management to sent a communication of acceptance of a list of protected workmen within 15 days from the date of receipt of the list from a Trade Union, the Trade Union concerned can raise a dispute before the Conciliation Officer under Rule 62(4). It is therefore submitted that there is no deemed fiction of recognition and a dispute must be raised by the Union representing the workmen. The learned counsel also placed reliance on the

decision of the Apex Court in **P. H. Kalyani vs. M/s. Air France, Cacutta,** (AIR 1963 SC 1756) wherein the Labour Court had held that in the matter of recognition of protected workmen there must be some positive action on the part of the employer in regard to the recognition of an employee as a protected workmen before he could claim to be a protected workmen for the purpose of section 33. The Apex Court noted that nothing had been shown which was contrary to the view taken by the Labour Court. It may be noted that the learned Judge of the Karnataka High Court in Canara Workshop (supra) has relied on the observation of the Apex Court in Kalyani's case in support of view he was taking. Reliance is also placed on the judgment of the Apex Court in the case of **Supreme Court Bar Association vs. Union of India and anr.,** (AIR 1998 SC 1895) to contend that if there is no jurisdiction, then the authority cannot assume jurisdiction.

On the other hand on behalf of the respondents, their learned counsel submits that even if there be some defect in

the order of the 2nd respondent in the matter of rejecting the application for setting aside the ex parte order this court in exercise of its extra ordinary jurisdiction can decide the same and should not remand the matter back and dispose it on merits, as all the facts necessary for deciding controversy in issue are on record.

It is then submitted that even assuming that two workmen could not be granted the status of protected workmen under Section 33, of the Industrial Disputes Act, respondent no. 1 was entitled to recognition of atleast one member considering that the petitioner earlier was granting recognition to two office bearers. Counsel of the petitioner stated that even assuming the membership of the respondent no.1 was as stated by petitioner then respondent no.1 is opting for granting status of 'protected workman' to Capt. Vikrant Sansare, General Secretary of the Union. It is also submitted that the view taken by the respondent no.2 cannot be said to be a view which could not be taken, considering Rule 61 of the Central rules. It is pointed out that on an

application being moved to grant status of protected workmen, the petitioners were bound to reply within 15 days from the date of receipt of the list and if no reply is sent it will be presumed that there is no dispute and consequentially the two workmen will then would have the status of protected workmen. Reliance is placed on the decision of a Single Judge of the Delhi High Court in the case of **M/s. Batra Hospital and Medical Research Centre of Ch Aishi Ram Batra Charitable Trust V/s. Batra Hospital Employees Union & ors**., in Civil Writ Petition No. 7748 of 2002 decided by the Delhi High Court on 19th May 2004. In that case the learned Single Judge has taken the view that the objection if any to the protected status sought by the workmen has to be communicated by the Management within 15 days and if no reply is field within 15 days by the employer, it will be deemed that the workmen mentioned in the application enjoyed the status of protected workmen. Reliance is also placed on the judgment of the Division Bench of the Gujarat High Court in the case of **R. Balasubramanian and ors and Carborandum Universal Ltd., Okha.,** (1978 1 LLJ 432). The learned

Division Bench of the Gujarat High Court has also taken the view that on failure to reply it will be presumed that the employer has committed default in his statutory obligation. The Gujarat High Court considered the view of the Apex Court in Kalyani's case (supra) and distinguished the same by holding that the ratio clearly proceeds on the special facts that the company had in its reply clearly pointed out the legal defects and therefore disputed the question of statutory obligation under Section 33(4) and unless the defects were duly remedied there will be no question of recognition. Reliance is also placed in the judgment of a learned Single Judge of this court in **Maharashtra State Road Transport Corporation, Akola and Conciliation Officer and ors.** (1994 1 LLJ 41, to contend that the learned Judge of this court had taken the view that when there are more than one Union, each union is entitled to protection of at least one of its memebrs and consequently to the status of a protected workmen. **Reliance is also placed in the case of British Airways p.l.c. ... vs. MMJ Rao, Assistant Commissioner of Labour** being Writ Petition No. 2029 of 1997 dated

3/12/1997, to contend that the jurisdiction exercised by the 2nd respondent is a limited jurisdiction to consider whether the workmen should be given the status of a protected workmen and the issues like whether the workmen concerned fall within the definition of workmen or not could not be gone into. It is also pointed out that the management could not have raised that grievance about existence of another union, and grant of recognition as the other Union has not raised a dispute.

9. With the above the following questions are required to be considered and answered:

a) If this court comes to the conclusion that the cause shown amounts to a sufficient cause whether this court should remit the matter back to the 2nd respondent for consideration or itself consider the case on merits in its exercise of the powers conferred under Articles 226 and 227 of the Constitution considering the period of declaration sought is for one year and on the facts of the present case?

b) Whether on the failure by the Management to

communicate the decision to the Union within 15 days of receipt of the application from the Union do the workmen in respect of whom protected workmen status is sought are deemed to be granted the status of 'Protected Workmen' ? If not what are the consequences?

and

c) Whether on an application by the Union under Rule 61 , was it open to the respondent no.2 to confer the status of 'protected workmen' from the date of application made to the employer or in the alternative from the date the application was made to the 2nd respondent, and if not on what other date?

10. In order to answer these issues we may first consider the true import of section 33 (4) of the Industrial Disputes Act 1947 and Rule 61 of the Central Rules, which read as under:

> **"Section 33(4)** In every establishment, the number of workmen to be recognized as 'Protected Workman' for the purpose of sub-

section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five 'Protected Workmen' and a maximum number of one hundred 'Protected Workmen' and for the aforesaid purpose the appropriate Government may make rules providing for the distribution of such Protected Workmen among various trade Unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as Protected Workmen. “

Rule 61 - “ Protected Workmen “

1) Every registered trade Union connected with an industrial establishment to which the Act applies, shall communicate to the employer before the 30th April every year, the names and addresses of such of the officers of the Union who are employed in

that establishment and who in the opinion of the Union, should be recognized as “ Protected Workmen “ . Any change in the incumbency of any such officer shall be communicated to the employer by the Union within 15 days of such change.

2) The employer shall subject to Section33, Sub- section (4) recognize such workmen to be Protected Workmen for the purpose of sub- section (3) of the said section and communicate to the Union, in writing, within fifteen days of the receipt of the names and addresses under sub- rule (1), the list of workmen recognized as “ Protected Workmen” for the period of twelve months from the date of such communication.

3) Where the total number of names received by the employer under sub – rule (1) exceeds the maximum number of “ Protected Workmen” admissible for the

establishment under section 33, sub section (4), the employer shall recognize as "Protected Workmen "only such maximum number of workmen."

"4) When a dispute arises between an employer and any registered trade Union in any manner connected with the recognition of " Protected Workmen" under this rule, the dispute shall be referred to any Regional Labour Commissioner (Central) or Assistant Labour Commissioner (Central) concerned, whose decision thereon shall be final."

From a perusal of section 33 (4) it is clear that in every establishment, a certain percentage of workmen is required to be recognized as ' Protected Workmen' for the purpose of sub- section (3) of section 33. It is not necessary for this court to go into the reasons for that, as that has been considered and explained in several judgments of the Apex Court itself. The object being to give blanket protection to

the workman so protected from unwanted victimization so that they could discharge duties on behalf of the union and or workmen without fear of being penalized. The protection is limited to one per cent of the total number of workmen employed therein subject to a minimum number of five 'Protected Workmen' and a maximum number of one hundred 'Protected Workmen'. If there be more than one union then in terms of the rules made there has to be a proper distribution of such Protected Workmen amongst various trade unions connected with the establishment.

Rule 61 Industrial Disputes Act (Central), 1957 provides for the manner in which the application must be made and communicated to the employer. The protection granted is for a period of 12 months from the date of such communication. The proviso to sub rule 3 merely reflects the language of sub section 4 of section 33.

It may be noted that Capt. Vikrant Sansare, General Secretary of the Union and Capt. Khan had the status of

Protected Workmen upto 31st January 2004. The application on 19.1.2004 was to grant protection to Capt. Vikrant Sansare and Capt. V. Kooner. This will naturally be from 1st February 2004 for a period of one year extending upto 31.1.2005. The rule does not specifically set out the day and date from which the protection should commence. What the rule provides is that the workmen who are recognized will be treated as Protected Workmen for the period of 12 months from the date of such communication. The communication must be within 15 days of the application which is received from the Union. Neither the section nor the rules provide that it can only be in respect of a recognized union as both the section and the rule recognizes the fact that there can be more than one union in the same Industrial Establishment. The concept of recognition therefore cannot be read into the section and the rules, considering the language, which provides for protection to members of a recognized union. The reasons therefore given by the petitioner to deny recognition is based on an irrelevant consideration and therefore bad. The only limitation is on

the number of workmen to be protected if there be more than one Union, in which event they will have to be distributed based on the membership of the Union in the establishment.

11. With that we now come to the first contention as to whether the order for setting aside the ex parte order suffers from an error apparent on the face of the record and / or is liable to be set aside on the basis of irrelevant consideration or non- consideration of material facts. The rules specifically do not provide that respondent no.2 has the power to set aside an ex parte order. However, in my opinion a Tribunal exercising quasi judicial powers has the power to recall its orders in such matters to do complete justice, when it had proceeded ex parte. There can be no dispute and it has not been disputed before me, that respondent is not a quasi – judicial Tribunal. If authority is to be cited, reference may be made to the Grindlays Bank Ltd case (supra) where the Apex Court noted the distinction between a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a

misapprehension by it and a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. In the latter case such a power of review has to be conferred. In the former case when it is sought due to procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process and such power inheres in every Court or Tribunal. When therefore the application was made for setting aside the ex parte order such an application though not specifically provided for would be maintainable, so as to do justice in the matter. The 2nd respondent did not deal with the application independently but proceeded to dispose it of by order dated 13th September 2004. The reasons given by the 2nd respondent are under heads (a) and (c) of the order and are not supported by the record and that would amount to non- application of mind. In my opinion that order will have to be set aside. The only question whether on the facts of this case whether this court itself considering the case of the petitioners ought in the exercise of its extra ordinary

jurisdiction should itself look in the matter.

The petitioners in response to the application filed by the respondent no.1 crystallized their objection by reply of July 26/29, 2004. In my opinion therefore the grounds of objection being set out in the reply of the petitioners themselves it would not be necessary for this court, considering the limited nature of the enquiry which has been gone into under Rule 61 to remit the matter but this court itself could exercise that jurisdiction. No additional ground has been raised which were not raised before the respondent no. 2. The objections are purely legal and do not require any evidence, except to the extent of how many workmen of the respondent no.1 Union could be granted protection. Considering the admitted position on the facts placed before the Court, that respondent no.1 at the relevant time had at least 107 number of the 270 line pilots and the further fact that the other Union did not apply for protection, this would be a fit case where this court itself deals with the matter. The first contention must therefore be

rejected. It may be added that the normal rule that the matter ought to be remanded, can be departed from, if basic facts are before the court exercising the extra ordinary jurisdiction, to consider the issue on merits, with a view to avoid multiplicity of proceedings which would delay and defeat the judicial process of expeditious disposal.

12. We may now deal with the second contention, namely whether on failure to communicate the decision within a period of 15 days it should be taken that recognition has been granted as respondent no.2 has proceeded to hold that on failure by the petitioners to communicate the decision within 15 days the two workmen are deemed to be protected.

The learned Judges of the Gujarat High Court as also the Delhi High Court, have taken the view that on failure to communicate the decision within 15 days, the workmen in respect of whom protected status is sought, are deemed to be granted the status of protected workmen. A learned Single Judge of the Karnataka High Court, however has

taken a contrary view by holding that mere failure to communicate cannot result in the workmen being granted the status but there must be a positive action on the part of the Management and if that is not there, it is open to either of the parties to move the 2nd respondent under Rule 61.

To answer the question whether on failure there is a deemed recognition it must be borne in mind that deemed recognition can only be there if there is a specific provision in the Act or if otherwise on a reading of the provisions it can be implied that there is deemed recognition. Section 33 (4) does not so provide. Under the rules what is set out is that the Union must intimate to the employer, which of the workmen are to be conferred the status of protected workmen, and the employer then, within 15 days of the receipt of the letter, should communicate to the Union the list of workmen recognized, to be protected workmen. A reading of the rule, in my opinion , does not lead to the inference that there is a deeming provision by which workmen can be treated as duly protected merely on the failure by the

employer to communicate its decision to the Union. Secondly if the Act itself has not so provided then a subordinate legislation cannot so provide. Apart from that power has been conferred on an authority to decide the dispute. The dispute is not only a positive act on the part of the management to grant recognition but will also include a failure to communicate their decision or no decision itself. In the instant case the subordinate legislation does not so provide but the rule has been so construed by the Gujarat and Delhi High Courts. The view that that there is no deemed protection is fortified by the view taken by the Apex Court in Kalyani's case (supra). What was under consideration in that case was whether the rules framed by the Government of West Bengal as to the recognition of protected workmen which rules are similar in all respect, except to the extent of intimating the decision to the Government. Considering the rules the Apex Court upheld the view of the Labour Court that there is no deeming fiction though in that case the company had replied to the letter pointing out certain legal defects therein. One of the

requirement of deeming fiction is that the application must be complete in all respects. As noted earlier there must be a specific provision in law. There is nothing mentioned in section 33(4). The rules do not expressly or impliedly provide so and in my opinion therefore the 2nd respondent has clearly committed an error of law which is apparent on the face of the record in holding that on failure by the employer to communicate within 15 days the workmen would be entitled to protection. A learned judge of the Karnataka High Court in M/s. **Canara Workshops** (supra), after considering the judgment in **P.H. Kalyani** (Supra) has taken a view that there must be positive action on the part of the management. The word dispute in Rule 61(4) must be read to include a case also of failure to communicate a decision or non-decision itself. The expression dispute cannot be limited only to those cases where the management has rejected the application on some ground or on no ground but also where there is failure to communicate the decision.

13. In the instant case, the respondent no.1 had made a specific

application that two of its members should be granted the status of protected workmen. The employer in turn by way of its reply which has been treated to be the written statement had merely raised objections which have been noted earlier and which may be again set out, viz., that there were claims from both Indian Pilots Guild as well as Air India Line Pilots' Association with regard to the representation of pilots working for AIR INDIA. That it is not the practice of the Management to grant the status of protected workmen to the office bearers of an unrecognized Union in Air India. The Indian Pilots Guild was a de- recognized Union and as such the status of protected workmen could not be granted to office bearers of Indian Pilots Guild. In so far as this contention is concerned for the purpose of recognition, as held earlier neither Rule 61 nor section 33 requires that it is only recognized union in an establishment which is required to be protected. The language used in section 33 is an application by a registered trade union. In other words all that is required is that the Union must be registered. Admittedly in the instant case the Union is registered. The

objection therefore by the petitioners herein that they do not give recognition of protection to members of un-recognized union would be clearly contrary to the purport and intent of the act and the rules made thereunder. The act makes no distinction, between recognized and unrecognized union. The grant of status of protected workmen is not dependent whether a management has recognized a Union or not in the absence of any specific provision in the act and the rules. On the contrary the recognition is to a registered Union. The section must be read in the spirit in which it has been enacted. The section recognizes that in an industry there is possibility of several unions, some of which may be recognized, some may be unrecognized for reasons or known.

14. We then come to objection that there were claims from both Line Pilots of Air-India and Air India Line Pilots' Association. A communication received by the petitioners dated June 16,2003 from the Air India Line Pilots' Association, has been placed on record setting out that the

majority of the line pilots were members of the Air India Line Pilots' Association which had been registered on 2nd June 2003. From the letter it will be clear that Air India Line Pilots' Association did not claim that they represented all the line pilots of the petitioners. On the contrary as stated earlier the respondent no.1 even in June 2003 as per the pleadings of the petitioner had atleast 107 members. What was the strength of the members of the Line Pilots Association in January 2004 is not on record nor did the Union apply for recognition of protected status for any of its members for the year 2004-2005. For the year 2003 – 2004, it was members of the pilots guild who had been conferred the status of protected workmen. In the affidavit filed on behalf of the respondent no.1 it has been brought out that the action of the petitioners in de- recognizing the Union is the subject matter of a petition which is pending before this court. It is further set out that the respondent no.1 has approximately 250 members. Air India Line Pilots' Association which was registered in June 2003 and to which some of the pilots had joined had merged with IPG. Copies of the resolutions were

annexed to the affidavit. In other words during the pendency of the application itself the said Union had decided to merge with respondent no.1. At any rate, even if the position is accepted that there were two unions at the highest that there would be two unions representing the line pilots. The admitted position as of the year 2003 -2004 was that petitioners had granted recognition to two of the members of respondent no.1. In para 12 of the affidavit in reply filed before this court the respondent no.1 has reiterated that the Air India Line Pilots' Association had merged with respondent no.1 and the same has been communicated to the Regional Labour Commissioner (Central) amongst others vide letter dated 5.7.2004. The contention of the petitioners in the petition was that there were 270 line pilots and the membership has been reduced to 107. In other words there is an admission that atleast 107 line pilots were members of respondent no.1. It is true that respondent no.2 has not answered the issue specifically. To my mind considering the facts on record only for that limited purpose it is not necessary to remand the matter, more so, after the

averments that in July 2004 the other union has merged with the 1st respondent and there is no material to the contrary. Even otherwise a statement was made on behalf of respondent no.1 that considering the date of the application atleast they would be entitled to protection to one member considering the rules themselves and as the petitioners had granted recognition for two members of the respondent no.1 in the past. In my opinion considering the facts and circumstances the limited nature of the enquiry that has been gone into and the purpose for which the protection is given, atleast one workmen representing respondent no.1 ought to have been granted the status of protected workmen. On behalf of respondent no.1 it is stated by the learned counsel under instructions that Capt. Vikrant Sansare is the workmen, whom respondent no.1 has opted to seek the status of protected workman. On the facts and circumstances the order of the Tribunal can be modified to the extent that instead of two workmen to be given protection, protection can be limited to Capt. Vikrant Sansare.

15. On behalf of the petitioners their learned counsel contends

that the services of Capt. Vikrant Sansare were terminated with effect from 9th August 2004 and as such the application was not maintainable as Capt. Sansare was no longer in service. The communication to the management was on 19th January 2004 and the application to respondent no.2 was on 17th May 2004. The subsequent termination would be of no consequence depending on the relief which can be granted consequence considering the date on which the protection has to be granted. The argument advanced if accepted would defeat the very concept of granting the status of protected workmen as any disciplinary action or act of termination arising from the acts arising from an industrial dispute, the protected workmen are not to suffer the consequences of their service being terminated without the permission of the Tribunal. If for some reason or other the status of protected workmen is not granted those for whom protection is sought, would never be entitled to protection when it is needed most, affecting the collective bargaining power and defeat the object as to why the section was introduced. Hence the contention must be rejected.

16.The last issue which remains is the issue as to from what date the protection is to be granted. Under rules, the protection is to be for one year from the date which the employer communicates to the union the decision of granting the status of protected workmen. That has to be done within fifteen days of receipt of the application. In the instant case the petitioners did not communicate the decision. The respondent no.1 thereafter raised a dispute by application dated 17th May 2004. The order of 2nd respondent being of quasi judicial nature it will have to relate back either to the period given for the management to communicate the decision or to the date of the application which is 17th May 2004. To my mind considering the object for which the protection is given, the limited period for which the protection is given and the time within which the management must communicate its decision, the protection will have to relate back to the date of the application to respondent no.1. That would be 17th May 2004.

17. The order of the 2nd respondent is partly modified inasmuch as instead of granting protection to two workmen whom the

respondent no.1 had sought by the application of 17th May 2004, the protection of status of protected workmen is granted only to Capt. Vikrant Sansare only from 17th May 2004.

Rule is made absolute accordingly with no order as to costs.

(F.I. Rebello J.)